



In Reply Refer To:  
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# United States Department of the Interior

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Thomas C. Creamer, Chief  
Operations, Regulatory, and Readiness Functions  
U.S. Army Corps of Engineers, New York District  
Jacob K. Javits Federal Building  
New York, New York 10278-0090  
Attn: Michael Oseback

SEP 11 2019

Dear Mr. Creamer:

This concludes project-level (Tier 2) consultation pursuant to Section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA) for U.S. Army Corps of Engineers (Corps) dredging activities that were evaluated by the U.S Fish and Wildlife Service (Service) in the October 2017 programmatic *Biological Opinion on the Effects of Recurrent Maintenance Dredging of the Sandy Hook Channel, Monmouth County, New Jersey on Four Federally Listed Species* (PBO). The PBO evaluated impacts from routine maintenance dredging of the Sandy Hook Federal Navigation Channel on the following federally listed (threatened) species: piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*), northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), and seabeach amaranth (*Amaranthus pumilus*).

## CONSULTATION HISTORY

July 6, 2018	The Corps requested Tier 2 consultation for planned fall 2018 maintenance dredging.
July 10, 2018	The Service requested additional information.
August 7, 2018	The Corps submitted a complete Tier 2 initiation package.
September 28, 2018	The Service issued a letter concluding Tier 2 consultation.
January 31, 2019	The Corps informed the Service that the fall 2018 dredging was not carried out as planned.
February 26, 2019	In accordance with the PBO, the Corps notified the Service and the National Park Service (NPS) of hydrographic/topographic surveys.

April 3, 2019	The Corps indicated that funds provided in November 2018 should be extended and obligated to the habitat offset program under the PBO, since the postponed fall 2018 dredging was now scheduled for fall 2019.
July 15, 2019	In accordance with the PBO, the Service notified the Corps of the first habitat offset project (utilizing the 2017 round of offset funding). The project, to remove invasive Asiatic sand sedge ( <i>Carex</i> spp.) from Sandy Hook, is awaiting NPS approval to proceed in September 2019.
July 26, 2019	The Service clarified that the September 28, 2018 Tier 2 consultation letter should be updated to reflect the specifics of the fall 2019 dredging.
August 7, 2019	Following a coordination call, the Corps provided updated information regarding the fall 2019 dredging and re-initiated Tier 2 consultation via email.

## PROJECT DESCRIPTION

Information submitted by the Corps confirms that the 2019 dredging activities conform to the actions covered by the PBO. The activity is scheduled to begin in September 2019 and take 2 to 3 months to complete. The Corps proposes to use mechanical (clamshell) dredging and ancillary equipment to remove 400,000 cubic yards of material from the Sandy Hook Channel at the tip of the Sandy Hook peninsula, Monmouth County, New Jersey. The area to be removed includes 3.2 acres above Mean Lower Low Water. Of that 3.2 acres, 2.3 acre is above Mean High Water. The sand placement location and details regarding any fence along the beach will be determined at a preconstruction meeting. The Corps has confirmed that all Conservation Measures (CMs) in the PBO will be implemented. Additional coordination is needed for certain CMs, as noted below.

CM 1	Please provide the qualifications of species monitors/surveyors, and the date and location of the preconstruction meeting.
CM 5	Prior to the start of construction, please provide a plan view of fencing as well as information on the estimated number of Corps and contractor staff that will be present on the ground, and a Corps point of contact responsible for overseeing and directing field operations on the ground during dredging.
CMs 6, 7 and 8	The Service concurs that no monitoring is needed for the northeastern beach tiger beetle. Please coordinate red knot monitoring and the seabeach amaranth survey with this office, as well as any contingencies that may be necessary under CM 8.
CM 9	Please provide at least two updates on scarping/beach condition (including georeferenced photos) within and adjacent to the dredging footprint during the two weeks following completion of dredging, and at least one additional update between March 1 and March 15, 2020.

- CM 10            Please provide an update regarding funding for the NPS staff offset associated with the 2017 and 2019 dredging events.
- CM 11            Please forward land form monitoring results when available.

## **STATUS OF THE SPECIES**

Relevant biological and ecological information on listed species occurring in the action area was provided in the PBO. That information remains pertinent and was considered by the Service in formulating this Tier 2 Biological Opinion.

## **ENVIRONMENTAL BASELINE**

The Service does not yet have complete results from all 2019 species surveys and routine monitoring from the North Beach area of Sandy Hook. We will provide complete results when available. Partial data that are currently available are provided here. Eleven piping plover nests were documented at North Beach in 2019, fledging a total of 36 chicks (Rafferty pers. comm. 2019). Based on coordinates provided by NPS, 3 of the 11 nests were located within approximately 500 feet of the channel limits, which is the minimum impact area of the dredging as discussed in the PBO (p. 20). We have no new red knot data since our September 28, 2018 letter. The Corps-funded survey for northeastern beach tiger beetles was carried out in 2017 and 2018; this species was not detected and the surveyors concluded this species is not currently extant on Sandy Hook (Gwiazdowski and Knisley 2019). Seabeach amaranth survey results from North Beach are not yet available for the 2019 growing season, but there is at least one plant in immediate proximity to the channel (Heuser pers. comm. 2019).

## **EFFECTS OF THE ACTION**

The Service has reviewed information provided by the Corps and determined that the likely effects of the proposed 2019 dredging action are consistent with those addressed in the PBO. There will be no direct mortality, physical injury, or disturbance of piping plovers due to the seasonal restrictions (CMs 3 and 4). If present in the action area, red knots may be disturbed by dredging activities. Surveys (CM 6) will document the numbers and any disturbance of red knots, and this data will inform the red knot contingency plan (CM 8) during future dredging events. No bodily injury or mortality of red knots is expected. We do not expect any northeastern beach tiger beetles to be killed, injured or removed by dredging or onshore personnel based on lack of beetles documented in the action area in recent years, including the 2017 and 2018 targeted, expert survey effort.

It is almost certain that seabeach amaranth seeds are present in the dredging footprint and that all seeds in the sand removal area will be lost to the beach ecosystem. It is not possible to estimate how many seeds will be affected; how many of those might have germinated absent the dredging; or how many may survive ocean placement and could eventually germinate following subsequent re-dredging and placement on a Monmouth County Beach through the Corps' beach nourishment program. The preconstruction survey (CM 7) and contingency plan (CM 8) will minimize, but may not entirely avoid, mortality of seabeach amaranth plants.

Indirect effects to listed species include habitat degradation from vehicle use (during topographic surveys or by onshore dredging personnel), and habitat disturbance during installation / removal of fence or other temporary structures on the beach. Adverse effects from these temporary habitat impacts will be minimized by CMs 2, 3, 4, 5, 6, and 7.

Longer-lasting habitat effects include direct removal of intertidal and supratidal beach by the dredging, and further habitat loss from scarping, cumulatively resulting in a long-term loss of habitat for listed species. The recurrent dredging of the Sandy Hook Channel continues to curtail the size of the sand spit and preclude its further growth. There is also potential for recurrent dredging to influence the habitat size, configuration, and characteristics through more subtle effects (*e.g.*, altered patterns of sand accretion could affect elevations and vegetation patterns; removal of protective shoals could increase flooding). These are considerable adverse effects to a scarce and sensitive habitat for all four listed species, and were fully considered in the PBO. Habitat impacts will be monitored under CM 11 and offset by CM 10.

## **BIOLOGICAL OPINION**

Actions and effects associated with the above action are consistent with those identified and evaluated in the PBO. After reviewing the size and scope of the project, the environmental baseline, the status of federally listed species in the action area, and the effects of the action, it is the Biological Opinion of the Service that the subject action is not likely to jeopardize the continued existence of the piping plover, red knot, northeastern beach tiger beetle or seabeach amaranth. No critical habitat has been designated for these species within the action area; therefore, no critical habitat will be affected.

## **INCIDENTAL TAKE STATEMENT**

Section 9 of the ESA and Federal regulations pursuant to Section 4(d) of the ESA prohibit the take of endangered and threatened wildlife species, respectively, without special exemption. *Take* is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. *Harm* is further defined by the Service as an act which actually kills or injures fish or wildlife; such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering (50 CFR 17.3). Take that is incidental to, and not intended as part of a Federal action, is not considered prohibited take under the ESA, as long as such take is in compliance the provisions of a Biological Opinion (*i.e.*, the PBO and this Tier 2 consultation).

We expect the 2019 dredging will cause non-lethal take (harm) of up to 5 pairs of piping plovers during the 2020 nesting season (*i.e.*, injury caused by habitat modification that results in selection of sub-optimal nest sites, removal of suitable foraging habitat, increased competition, and potentially reduced reproductive success). We expect the 2019 dredging will cause non-lethal take (harm) of up to 10 red knots (*i.e.*, injury caused by disturbance that sufficiently interferes with feeding and sheltering so as to impact energy balance and body weight, which can

in turn impact survival rates). The type and amount of anticipated incidental take is consistent with effects to listed species as evaluated in the PBO.

To be exempt from the take prohibitions of Section 9 of the ESA, the Corps must implement all pertinent Reasonable and Prudent Measures (RPMs), as stipulated in the PBO, to minimize the impact of anticipated incidental take of listed wildlife. The Service has determined that no additional RPMs or implementing Terms and Conditions (TCs), beyond those specified in the PBO, are needed to minimize the impact of incidental take anticipated for the subject action.

## **REINITIATION – CLOSING STATEMENT**

This concludes Tier 2 formal consultation on the effects of the proposed 2019 Sandy Hook Channel dredging. As provided in 50 CFR Section 402.16, re-initiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or, (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending re-initiation. In order to be exempt from the prohibitions of Section 9 of the ESA, the Corps must comply with all binding provisions of the PBO (CMs, RPMs, and TCs), and must carry out the action consistent with the above Project Description. This Tier 2 consultation covers only the 2019 dredging action. Future dredging actions will be considered separate Federal actions and will require further Tier 2 consultation.

## **CONCLUSION**

Please contact Wendy Walsh at (609) 382-5274, or [wendy\\_walsh@fws.gov](mailto:wendy_walsh@fws.gov), if you have any questions regarding this consultation, or require further assistance regarding federally listed threatened or endangered species.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eric Schradling', is written over the printed name and title.

Eric Schradling  
Field Supervisor

## REFERENCES

### Literature Cited

Gwiazdowski, R. and C.B. Knisley. 2019. Survey report for the Northeastern Beach tiger beetle (*Cicindela dorsalis*), adult and larval forms, at Sandy Hook, NJ during summer and fall of 2017 & 2018. Report to U.S. Fish and Wildlife Service, New Jersey Field Office. Shrewsbury, Massachusetts. 13 pp.

### Personal Communications

Heuser, J. 2018. National Park Service, Gateway National Recreation Area, Sandy Hook Unit, Fort Hancock, New Jersey.

Rafferty, P. 2019. Chief, Resource Stewardship, Gateway National Recreation Area, Staten Island, New York.

### cc via email:

#### **subject: 2019 Sandy Hook Channel Dredging Tier 2**

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